

MONTANA LEGISLATIVE HISTORY

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AVAILABLEChapter 466 19 95Bill H 229 S _____ Original bill & history cH. Committee on JudiciaryHearing Date(s) Feb 08 ✓ CFeb 16 ✓ C

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Date Out Feb 17 ✓ CS. Committee on JudiciaryHearing Date(s) Mar 13 ✓ CMar 14 ✓ C

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Mar 15 ✓ C

Did this bill originate in an interim committee? ____ Yes ____ No

Committee _____

Report _____

2/23 MISSED TRANSMITTAL DEADLINE
DIED IN COMMITTEE

HB 428 INTRODUCED BY EWER, ET AL.

REVISE BANKING LAWS AND CONFORM MONTANA STATUTES TO
PROVISIONS OF THE RIEGLE-NEAL INTERSTATE BANKING AND
BRANCHING EFFICIENCY ACT OF 1994

2/04	INTRODUCED		
2/04	FIRST READING		
2/04	REFERRED TO BUSINESS & LABOR		
2/09	HEARING		
2/15	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/17	2ND READING PASSED	98	0
2/18	3RD READING PASSED	96	2
	TRANSMITTED TO SENATE		
2/21	FIRST READING		
2/21	REFERRED TO BUSINESS & INDUSTRY		
3/09	HEARING		
3/15	COMMITTEE REPORT—BILL CONCURRED		
3/18	2ND READING CONCURRED	31	11
3/20	3RD READING CONCURRED	43	7
	RETURNED TO HOUSE		
3/21	SIGNED BY SPEAKER		
3/22	SIGNED BY PRESIDENT		
3/23	TRANSMITTED TO GOVERNOR		
3/27	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 265		
	EFFECTIVE DATE: 03/27/95—SECTIONS 1-4 & 8-18		
	EFFECTIVE DATE: 09/29/95—SECTIONS 5-7		

HB 429 INTRODUCED BY MOLNAR

GENERALLY REVISE YOUTH COURT CONFIDENTIALITY PROVISIONS

2/04	INTRODUCED		
2/04	FIRST READING		
2/04	REFERRED TO JUDICIARY		
2/06	FISCAL NOTE REQUESTED		
2/09	HEARING		
2/10	FISCAL NOTE RECEIVED		
2/10	FISCAL NOTE PRINTED		
2/17	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/20	2ND READING PASSED	63	36
2/21	3RD READING PASSED	61	38
	TRANSMITTED TO SENATE		
2/27	FIRST READING		
2/27	REFERRED TO JUDICIARY		
3/13	HEARING		
3/16	COMMITTEE REPORT—BILL CONCURRED AS AMENDED		
3/24	2ND READING CONCURRED	49	0
3/25	3RD READING CONCURRED	48	0
	RETURNED TO HOUSE WITH AMENDMENTS		
4/03	2ND READING AMENDMENTS CONCURRED	92	7
4/04	3RD READING AMENDMENTS CONCURRED	77	21
4/06	SIGNED BY SPEAKER		
4/07	SIGNED BY PRESIDENT		
4/10	TRANSMITTED TO GOVERNOR		
4/14	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 466		
	EFFECTIVE DATE: 04/14/95		

HOUSE BILL NO. 429

INTRODUCED BY

Brad Mohan

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING YOUTH COURT CONFIDENTIALITY PROVISIONS; PROVIDING THAT CERTAIN YOUTH CASE RECORDS MUST BE SEALED WHEN THE COURT'S JUDGMENTS HAVE BEEN FULFILLED; CLARIFYING THAT JUSTICE'S COURT RECORDS RELATED TO A YOUTH CONTINUE TO BE A MATTER OF PUBLIC RECORD AFTER THE YOUTH REACHES 18 YEARS OF AGE; REQUIRING NOTIFICATION OF AND CONSULTATION WITH VICTIMS OF JUVENILE FELONY OFFENSES; AMENDING SECTIONS 41-5-521, 41-5-603, 41-5-604, 46-24-207, AND 52-2-211, MCA; REPEALING SECTIONS 41-5-601 AND 41-5-602, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

NEW SECTION. Section 1. Youth court matters -- public record. All youth court matters on file with the clerk of court related to a youth who is alleged or found to be a youth in need of supervision or a delinquent youth are a public record until the record is sealed under 41-5-604.

NEW SECTION. Section 2. Youth matters cited in justice's court -- public record. All filed matters related to a youth cited in a justice's court are a public record.

Section 3. Section 41-5-521, MCA, is amended to read:

"41-5-521. Adjudicatory hearing. (1) Prior to any adjudicatory hearing, the court shall determine whether the youth admits or denies the offenses alleged in the petition. If the youth denies all offenses alleged in the petition, the youth, ~~his~~ or the youth's parent, guardian, or attorney may demand a jury trial on ~~such~~ the contested offenses. In the absence of ~~such~~ a demand, a jury trial is waived. If the youth denies some offenses and admits others, the contested offenses may be dismissed in the discretion of the youth court judge. The adjudicatory hearing ~~shall~~ must be set immediately and accorded a preferential priority.

(2) An adjudicatory hearing ~~shall~~ must be held to determine whether the contested offenses are supported by proof beyond a reasonable doubt in cases involving a youth alleged to be delinquent or in

1 need of supervision. If the hearing is before a jury, the jury's function ~~shall be~~ is to determine whether the
2 youth committed the contested offenses. If the hearing is before the youth court judge without a jury, the
3 judge shall make and record ~~his~~ findings on all issues. If the allegations of the petitions are not established
4 at the hearing, the youth court shall dismiss the petition and discharge the youth from custody.

5 (3) An adjudicatory hearing ~~shall~~ must be recorded verbatim by whatever means the court
6 considers appropriate.

7 (4) The youth charged in a petition must be present at the hearing and, if brought from detention
8 to the hearing, may not appear clothed in institutional clothing.

9 (5) In a hearing on a petition under this section, the general public may not be excluded ~~when the~~
10 ~~hearing is held on a contested offense to which publicity must be allowed under subsection (2) of~~
11 ~~41-5-601.~~

12 (6) If, on the basis of a valid admission by a youth of the allegations of the petition or after the
13 hearing required by this section, a youth is found to be a delinquent youth or a youth in need of
14 supervision, the court shall schedule a dispositional hearing under this chapter.

15 (7) When a jury trial is required in a case, it may be held before a jury selected as provided in Title
16 25, chapter 7, part 2, and in Rule 47, M.R.Civ.P., Rule 47."

17
18 **Section 4.** Section 41-5-603, MCA, is amended to read:

19 **"41-5-603. Youth court and department records.** (1) ~~Youth~~ Except as provided in subsection (2),
20 all youth court and youth court related department records on file with the clerk of court, including social,
21 medical, and psychological records, reports of preliminary inquiries, predispositional studies, and supervision
22 records of probationers petitions, motions, other filed pleadings, court findings, verdicts, orders, and
23 decrees, are open to public inspection prior to the sealing of until the records are sealed under 41-5-604.

24 (2) Social, medical, and psychological records, predispositional studies, and supervision records
25 of probationers are open only to the following:

- 26 (a) the youth court and its professional staff;
27 (b) representatives of any agency providing supervision and having legal custody of a youth;
28 (c) any other person, by order of the court, having a legitimate interest in the case or in the work
29 of the court;
30 (d) any court and its probation and other professional staff or the attorney for a convicted party

1 who had been a party to proceedings in the youth court when considering the sentence to be imposed upon
2 ~~such the~~ party;

3 (e) the county attorney;

4 (f) the youth who is the subject of the report or record, after ~~he has been emancipated~~
5 emancipation or ~~reaches~~ reaching the age of majority;

6 (g) a member of a county interdisciplinary child information team formed under 52-2-211 who is
7 not listed in this subsection ~~(1)~~ (2); and

8 (h) members of a local interagency staffing group provided for in 52-2-203.

9 ~~(2)(3)~~ All or any part of records information secured from records listed in subsection ~~(1)~~ (2) of this
10 ~~section~~, when presented to and used by the court in a proceeding under this chapter, ~~shall~~ must also be
11 made available to the counsel for the parties to the proceedings.

12 ~~(3) Petitions, motions, and other pleadings filed in a case, including findings, verdicts, orders, and~~
13 ~~decrees, shall be open to public inspection only when related to an offense for which access must be~~
14 ~~allowed under 41-5-601.~~

15 ~~(4) All information obtained in discharge of an official duty by any officer or other employee of the~~
16 ~~youth court or the department shall be privileged and shall not be disclosed to anyone other than the judge~~
17 ~~and others entitled under this chapter to receive such information, unless otherwise ordered by the judge.~~

18 ~~(5)(4)~~ After youth court and department records, reports of preliminary inquiries, predispositional
19 studies, and supervision records of probationers are sealed, they are not open to inspection except, upon
20 order of the youth court, for good cause to:

21 (a) those persons and agencies listed in subsection ~~(1)~~ (2); and

22 (b) adult probation professional staff preparing a presentence report on a youth who has reached
23 the age of majority."

24
25 **Section 5.** Section 41-5-604, MCA, is amended to read:

26 "**41-5-604. Disposition of records.** (1) ~~All~~ Except as provided in subsections (2) and (5), youth
27 court records and law enforcement records ~~except fingerprints and photographs~~ pertaining to a youth
28 ~~coming~~ under this chapter ~~shall~~ must be physically sealed when the youth reaches the age of 18 years.

29 (2) In those cases in which jurisdiction of the court or any agency is extended beyond the youth's
30 18th birthday, the ~~above~~ records and files ~~shall~~ referred to in subsection (1) must be physically sealed upon

1 termination of the extended jurisdiction.

2 (3) Upon the physical sealing of the records pertaining to a youth pursuant to this section, ~~any~~ an
3 agency or department that has in its possession copies of the sealed records ~~so sealed~~ shall also seal or
4 destroy ~~such~~ its copies of the records. Anyone violating the provisions of this subsection ~~shall be~~ is subject
5 to contempt of court.

6 (4) ~~Nothing herein contained~~ This section ~~shall~~ does not prohibit the destruction of ~~such~~ records
7 with the consent of the youth court judge or county attorney after 10 years from the date of sealing.

8 (5) The requirements for sealed records in this section ~~shall~~ do not apply to fingerprints and
9 photographs, youth traffic records, or to records ~~directly related to an offense to which access must be~~
10 ~~allowed under 41-5-601~~ in any case in which the youth did not fulfill all requirements of the court's
11 judgment or disposition."

12
13 **Section 6.** Section 46-24-207, MCA, is amended to read:

14 **"46-24-207. Victims and witnesses of juvenile felony offenses -- consultation -- notification of**
15 **proceedings.** (1) The attorney general shall ensure that the services and assistance that must be provided
16 under this chapter to a victim or witness of a crime ~~must~~ are also ~~be~~ provided to the victim or witness of
17 a juvenile felony offense.

18 (2) ~~The attorney general shall assure that a victim or witness of a juvenile felony offense is~~
19 ~~provided the same services and assistance required under this chapter for the victim or witness of a crime.~~
20 In a proceeding filed under Title 41, chapter 5, part 5, the county attorney or a designee shall consult with
21 the victim of a juvenile felony offense or, in the case of a minor victim or a homicide victim, with the
22 victim's family regarding the disposition of the case, including:

23 (a) a dismissal of the petition filed under 41-5-501;

24 (b) a reduction of the charge to misdemeanor;

25 (c) the release of the youth from detention or shelter care pending the adjudicatory hearing; and

26 (d) the disposition of the youth.

27 (3) (a) Whenever possible, a person described in subsection (3)(b) who provides the youth court
28 with a current address and telephone number must receive prompt advance notification of youth court case
29 proceedings, including:

30 (i) the filing of a petition under 41-5-501;

1 (ii) the release of the youth from detention or shelter care; and

2 (iii) proceedings in the adjudication of the petition, including, when applicable, entry of a consent
3 decree under 41-5-524, the setting of a date for the adjudicatory hearing under 41-5-521, the setting of
4 a date for the dispositional hearing under 41-5-522, the disposition made, and the release of the youth from
5 a youth correctional facility.

6 (b) A person entitled to notification under this subsection (3) must be a victim of a juvenile felony
7 offense, an adult relative of the victim if the victim is a minor, or an adult relative of a homicide victim.

8 (c) The court shall provide to the department the list of people entitled to notification under this
9 subsection (3), and the department is responsible to provide the notification.

10 (4) For purposes of this section, "juvenile felony offense" means an offense committed by a
11 juvenile that, if committed by an adult, would constitute a felony offense. The term includes any offense
12 for which a juvenile may be declared a serious juvenile offender, as defined in 41-5-103."

13
14 **Section 7.** Section 52-2-211, MCA, is amended to read:

15 **"52-2-211. County interdisciplinary child information team.** (1) The following persons and agencies
16 operating within a county may by written agreement form a county interdisciplinary child information team:

- 17 (a) the youth court;
- 18 (b) the county attorney;
- 19 (c) the department of family services;
- 20 (d) the county superintendent of schools;
- 21 (e) the sheriff;
- 22 (f) the chief of any police force; and
- 23 (g) the superintendents of public school districts.

24 (2) The persons and agencies signing a written agreement under subsection (1) may by majority
25 vote allow the following persons to sign the written agreement and join the information team:

- 26 (a) physicians, psychologists, psychiatrists, nurses, and other providers of medical and mental
27 health care;
- 28 (b) entities operating private elementary and secondary schools;
- 29 (c) attorneys; and
- 30 (d) a person or entity that has or may have a legitimate interest in one or more children that the

1 information team will serve.

2 (3) The members of the information team or their designees may form one or more auxiliary teams
3 for the purpose of providing service to a single child, a group of children, or children with a particular type
4 of problem or for any other purpose. Auxiliary teams are subject to the written agreement.

5 (4) The purpose of the team and written agreement is to facilitate the exchange and sharing of
6 information that one or more team members may be able to use in serving a child in the course of their
7 professions and occupations, including but not limited to abused, neglected, dependent, and delinquent
8 children and youth in need of supervision. Information regarding a child that a team member supplies to
9 other team members or that is disseminated to a team member under 41-3-205, ~~41-5-602~~, or 41-5-603(2)
10 may not be disseminated beyond the team.

11 (5) The terms of the written agreement must provide for the rules under which the team will
12 operate, the method by which information will be shared, distributed, and managed, and any other matters
13 necessary to the purpose and functions of the team."

14
15 **NEW SECTION. Section 8. Repealer.** Sections 41-5-601 and 41-5-602, MCA, are repealed.

16
17 **NEW SECTION. Section 9. Codification instruction.** (1) [Section 1] is intended to be codified as
18 an integral part of Title 41, chapter 5, part 6, and the provisions of Title 41, chapter 5, part 6, apply to
19 [section 1].

20 (2) [Section 2] is intended to be codified as an integral part of Title 3, chapter 10, part 5, and the
21 provisions of Title 3, chapter 10, part 5, apply to [section 2].

22
23 **NEW SECTION. Section 10. Effective date.** [This act] is effective on passage and approval.

24 -END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for HB0429, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:

An act generally revising youth court confidentiality provisions; providing that certain youth case records must be sealed when the court's judgments have been fulfilled; clarifying that justice's court records related to a youth continue to be a matter of public record after the youth reaches 18; requiring notification of and consultation with victims of juvenile felony offenses.

ASSUMPTIONS:

1. The bill will have no material fiscal impact on the state judiciary.
2. The Probation and Parole Bureau of the Department of Corrections and Human Services will still be able to access youth files for pre-investigation reports with a court order. Therefore, the bill will have no fiscal impact on the department.
3. The bill will not change the duties or responsibilities of the Department of Family Services; therefore, it will have no fiscal impact on the department.

FISCAL IMPACT:

None.

EFFECT ON COUNTY OR OTHER LOCAL REVENUES OR EXPENDITURES:

The bill is not expected to have a material fiscal impact on local government expenditures.

Dave Lewis 2-10-95
DAVE LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

Brad Molnar
BRAD MOLNAR, PRIMARY SPONSOR DATE

Fiscal Note for HB0429, as introduced

HB 429

Vote: The DO PASS motion on HB 296 carried 11-8 by roll call vote.

{Tape: 1; Side: B}

HEARING ON HB 429

Opening Statement by Sponsor:

REP. BRAD MOLNAR, HD 22, offered HB 429 for the committee's consideration. He stated that the bill was written by a youth court judge from Missoula. The bill would provide for the opening of youth court records to the public. Many of the protections afforded youth are retained under this bill. The victims of juvenile perpetrators would be kept informed of the disposition of the cases involving them. Though there is no retribution allowed for juvenile offenders, the publication of their offenses would provide protection for the victims and general public as well as apply pressure on the youth toward reformation.

Proponents' Testimony:

Charles Walk, Executive Director, Montana Newspaper Association, supported HB 429 which would revise the youth court confidentiality provision. They believed this bill adhered to the criteria they follow in opening more information to public business and interest while providing reasonable protection for privacy consideration.

Mike Voeller, Lee Newspapers of Montana, supported and echoed the previous testimony. He submitted written testimony. EXHIBIT 1

Opponents' Testimony:

Mary Ellerd, Executive Secretary, Montana Juvenile Probation Officers Association, recommended that, because of their complexity, the revisions in this bill be included in an all encompassing study of the youth court act such as proposed in HB 240.

Richard Meeker, Chief Juvenile Probation Officer, First Judicial District, opposed the bill and explained his specific concerns throughout the bill. To him the bill indicated that there would be no confidentiality at all. In particular he addressed those who are in the youth-in-need-of-supervision category. Many of the offenses charged in that category would not be violations if the person were over 18 or 21, such as truancy, running away, etc. Many times these children come from dysfunctional backgrounds of neglect or abuse. The bill indicated that the background would not be released to the public, but the

Often with children in this category, they deal with competing interests between parent and child. This bill would provide that a parent or attorney could request a jury trial. It might not be in the best interests of the child to hold a jury trial in which the general public would again be privy to information they do not need to know and that could be contrary to the best interests of the child. He had no problem with the concept of notification of the victims, but his concern did involve funding to accomplish it as fully as was being potentially mandated.

He gave the history of the responsibilities and functions of Managing Resources Montana (MRM). He felt that the backgrounds of many of the children they serve should not become public knowledge.

Questions From Committee Members and Responses:

REP. ELLEN BERGMAN asked if this bill wasn't concerned with reporting crime and publication of the names of those committing those crimes.

Mr. Meeker said the bill would provide for opening the records on offenses such as runaways which are not technically crimes.

REP. BERGMAN compared it with handling of adult background information when a crime is reported.

Mr. Meeker said that defense attorneys in juvenile cases use the background information to present cause for the behavior, while in adult cases that is not a factor.

REP. BERGMAN asked if it had the effect of protecting the parents.

Mr. Meeker felt it would protect the parents as well as the youth. What they have done may not be totally illegal.

REP. LOREN SOFT noted that Mr. Meeker had differentiated between youths in need of supervision and the juvenile delinquent. He asked if the section on youths in need of supervision could be removed.

REP. MOLNAR said the intent was for the court to focus on what is known; i.e. the crime, and to overlook the unproven allegations of child abuse or neglect, keeping those confidential. He felt that a youth in need of supervision quite often will have other problems though they may not be charged beyond a status offense. Often they run because they do not want to obey their parents and not because they are being abused or neglected though they may allege such a problem as the cause.

REP. TASH asked if media announcements would help in the notification-of-victims process.

Mr. Meeker responded that there is existing statute to cover notification of media sources and this bill did not increase that, but it did break it down to a different category of children. In his view, this category did include children who are themselves victims and it would be unfruitful to expose their problems to the public through the press. He suggested as a remedy for the issue eliminating the particular section which allows for a substitute petition (youth in need of supervision) for a youth who had committed a felony offense.

REP. HURDLE reflected on the testimony which was that 80% of the youths in need of supervision are neglected or abused. She asked if there were cases where this is being kept secret and thus protecting the parents who are committing the neglect or abuse.

Mr. Meeker said many of the children in this category are well known in the system. Though he agreed parents should be held accountable, he thought that they needed to consider any benefit to the child or any reasonable benefit to the public to know what the background of the child has been. He had examples where this information had been used to exploit the situation and increase the dysfunction. On the other hand, withholding it has been beneficial in future reconciliation with the parents and restoration of individuals' lives.

REP. HURDLE asked if it didn't serve to protect those who hadn't reformed.

Mr. Meeker said, "Without a doubt, without a doubt, but again the question I would have is what purpose does it give to the public to know that this person is neglecting the child, who is still alcoholic, who still uses drugs or alcohol, who still abuses the child. What purpose does it do the public." If the public would respond to help the children, he felt it would make sense; but he did not think they would respond.

REP. HURDLE wondered if the reason the public has become immune to it is that the information is so objective, while the public might feel differently if they knew who it was.

Mr. Meeker said it was a philosophical question and did not serve the public well to know.

REP. CHRIS AHNER asked if it would not be a benefit to the people involved to be exposed and to admit their wrongdoing. She based that on AA principles.

Mr. Meeker said that his experience was that alcoholics admit their problem in certain places where they are accepted and where the acceptance would provide incentive. He did not think the general public is an AA meeting.

REP. AHNER thought that these people who have transformed their lives would benefit the lives of others as encouragement to do the same.

Mr. Meeker did not know whether the people he knew of would want to tell their story in public. Though their stories might inspire the public, the child involved still is scarred and how would that affect the child.

REP. AHNER wondered if since the whole gist of the bill was in reporting the crime and not exposing the background, they shouldn't be held accountable for what they have done. She wanted to know if it had a place in helping to stop the behavior.

Mr. Meeker said many of the kids in that category have not actually committed a crime, but rather a status offense. He said that the system does hold youths in need of supervision accountable for their actions and he explained with examples how that is done. He maintained that putting their names in the paper was a questionable method for holding them accountable.

REP. AHNER asked for clarification of the style of accountability that is required.

Mr. Meeker gave a scenario example of what that would mean.

REP. CAREY asked if he understood the way the bill was written the court would not have discretion to keep some of the information private.

REP. MOLNAR said that the court shall allow them to be public and it would up to someone else to disseminate. The press would not be mandated that they must publish the information, but it would be available. The protections included would keep the information focused on the crime.

REP. CAREY asked why the sponsors would not want to give the court some discretion in deciding whether some information could be made public.

REP. MOLNAR said he and the judge had disagreed in the handling of this issue and this drafting reflected the judge's preference.

REP. SOFT asked if Mr. Meeker thought public disclosure might help in some cases.

Mr. Meeker reiterated that his concern was for some of the children who would not receive any therapeutic benefit from it.

REP. SOFT asked if he would agree that there is no fine line in determining which child is purely one in need of supervision and solely a delinquent in behavior.

Mr. Meeker agreed.

CHAIRMAN CLARK asked if the information could still be sealed under 41-5-604, MCA.

Mr. Meeker said it could at a certain age. He was concerned that the hearings would be open. Social summaries and psychological reports are sealed, but in the hearings with the public permitted to be there the same information could come out even though it would be in written form.

CHAIRMAN CLARK asked if information concerning a victim's stolen property is given to the victim. He cited current law which says if the court says it cannot be given, that information must be withheld.

Mr. Meeker replied that under the Youth Court Act, if the victim acknowledges his involvement in the crime, the identity of the suspect can be released to the victim. This provides the victim recourse for reimbursement for the loss. Though they can release the name of the suspect and their parents, not all information can be released.

CHAIRMAN CLARK asked if Mr. Meeker was aware of a recent case which was alluded to in testimony. Mr. Meeker was not familiar with it.

REP. HURDLE asked Mr. Walk if he interviewed a victim who had been given the name of the perpetrator, could he then publish the name of the perpetrator.

Mr. Walk said it depended on the disposition of the case according to the youth court judge. The missing element would be the discretionary powers built into the Youth Court Act for the judge. He felt that HB 240 was important for that reason.

REP. HURDLE re-asked the question.

Mr. Walk said he believed he could release the name of the suspect after interviewing the victim, but the prudent newspaper would check with the probation officer or with the youth court judge to determine the disposition of the case.

Closing by Sponsor:

REP. MOLNAR closed by challenging points made by the opponents of HB 429. He believed that the time for studies had passed and that the current Youth Court Act needs drastic adjustments. He reiterated his arguments for the changes which would be enacted through the passage of this bill. The intent of the bill was to provide immediate and enforceable consequences for offenses committed by youth. He addressed the issue of youths alleging abuse in cases where the youth needed restraint to control behavior which would harm himself or another.

CHAIRMAN CLARK relinquished the chair to VICE CHAIR ANDERSON.

HEARING ON HB 371

Opening Statement by Sponsor:

REP. LIZ SMITH, HD 56, opened with her remarks on HB 371 which increased the penalty for harming or killing a police dog and provide restitution by the offender to the law enforcement agency. She distributed a letter as support for the bill and also distributed suggested amendments. EXHIBITS 2 and 3

Proponents' Testimony:

Roy Brock, Jr., Powell County Sheriff's Department, had requested this bill be introduced because he felt these dogs used in law enforcement are underprotected by current law. He felt that this bill would not only enhance the protection, but also their upkeep which is often paid out-of-pocket by those using them in service for law enforcement. He reviewed the uses of the canine services. He showed a video to the committee to reinforce his support of the bill.

CHAIRMAN CLARK resumed the chair.

Paul Craft, Dillon Police Department, shared an incident which illustrated the need for this legislation.

Beth Baker, Department of Justice, gave supporting remarks and talked about the use of a dog in investigation of arson for the state. She urged support of the bill and the amendments.
EXHIBIT 4

Opponents' Testimony:

None

Questions From Committee Members and Responses:

REP. BERGMAN asked why a bill was needed to protect a police dog.

REP. SMITH said this bill would increase and expand the penalty as well as request restitution. There is a law presently in place which only provides for their protection while under supervision. She cited various examples of the expense in training and maintaining these dogs and their value in law enforcement and search and rescue situations.

{Tape: 2; Side: A; Approx. Counter 20.5.}

REP. MOLNAR agreed with the intent of the bill, but wondered if it would not be wise to lower the fine and not to exceed a one-

HOUSE OF REPRESENTATIVES

Judiciary

ROLL CALL

DATE 2/9/95

NAME	PRESENT	ABSENT	EXCUSED
Rep. Bob Clark, Chairman	✓		
Rep. Shiell Anderson, Vice Chair, Majority	✓ late ✓		
Rep. Diana Wyatt, Vice Chairman, Minority	✓		
Rep. Chris Ahner	✓ late ✓		
Rep. Ellen Bergman	✓ late ✓		
Rep. Bill Boharski	✓		
Rep. Bill Carey	✓		
Rep. Aubyn Curtiss	✓		
Rep. Duane Grimes	✓		
Rep. Joan Hurdle	✓		
Rep. Deb Kottel	✓		
Rep. Linda McCulloch	✓		
Rep. Daniel McGee	✓		
Rep. Brad Molnar	✓		
Rep. Debbie Shea	✓		
Rep. Liz Smith	✓		
Rep. Loren Soft	✓		
Rep. Bill Tash	✓		
Rep. Cliff Trexler	✓		

Feb. 9, 1995

Testimony of Mike Voeller on House Bill 429

Mr. Chairman, members of the committee. For the record, my name is Mike Voeller and I represent Lee Newspapers of Montana.

We support House Bill 429 and the testimony presented by Charles Walk of the Montana Newspaper Association. I would also like to present some additional testimony.

In the 1960s the late District Judge Lester Loble of Helena established a national reputation for his tough stance on handling juvenile offenders and his insistence that their names be a matter of public record. Today, the names of juvenile offenders, for the most part, are shrouded in secrecy.

I retired last August after 30 years with the Helena Independent Record and 36 years in the newspaper business. Most of my experience has been as an editor and/or editorial page editor. I don't know how many times during those 36 years that I have heard people express frustration with the secrecy surrounding offenses committed by juveniles.

This is just one of many cases in point. In November 1980 I wrote an editorial headlined "There oughtta be a law" which invited readers to submit their ideas for proposed legislation. I was surprised at the number of people who wrote, "Publish the names of juvenile offenders." Early in the 1981 session I discussed the issue and the concerns expressed by readers who responded to my editorial with former Gov. Stan Stephens who was then serving in the Montana Senate from Havre. Stephens sponsored legislation that eventually became Section 2 of 41-5-601. It states that when a petition is filed under 41-5-501, publicity may not be withheld regarding any youth formally charged or proceeded against as or found to be a delinquent youth as a result of the commission of any offense that would be punishable as a felony if the youth were an adult. My recollection is that some teen-agers testified in support of this legislation.

But does the law work in every case? Yesterday I was discussing HB429 with a Helena businessman who expressed his frustration with juvenile crime and secrecy. He told me that last spring the windows of his business as well as the windows of three nearby businesses were shot out with BB guns. The damage totaled \$4,800. When the businessman later asked authorities about his case he was told four juveniles had been arrested and placed on probation. When he asked for their names, he was told they were confidential.

Under current law names of juveniles are public record if they are cited for traffic offenses, including DUI. However, if juveniles are charged with illegal possession their names are not a matter of public record. What's the difference?

I readily admit that my opinion that the names of juvenile offenders should be published is based on anecdotal evidence. However, I think it has validity worthy of consideration and that the public would applaud passage of House Bill 429.

HOUSE OF REPRESENTATIVES
VISITORS REGISTER

JUDICIARY

COMMITTEE

DATE 2.9.95

BILL NO. HB 429 SPONSOR(S) Rep. Molnar

PLEASE PRINT

PLEASE PRINT

PLEASE PRINT

NAME AND ADDRESS	REPRESENTING	Support	Oppose
Mary Ellerd	MOTDA		
Chaele Wood	Wt. Newspaper Assoc	✓	
Mike Miller	Sec Newspaper of Mont	✓	
R. L. Mel	Jus. Prob. Office		✓

PLEASE LEAVE PREPARED TESTIMONY WITH SECRETARY. WITNESS STATEMENT FORMS ARE AVAILABLE IF YOU CARE TO SUBMIT WRITTEN TESTIMONY.

HR:1993

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CS-14

disclaiming clear liability and investigation of the third party was being continued while the insurance companies delay payment.

Vote: The DO PASS AS AMENDED motion carried 15 - 3, REPS. SMITH, TREXLER and BOHARSKI voted no. (REP. SHEA was absent; REPS. ANDERSON and AHNER voted by proxy.)

CHAIRMAN CLARK said the committee would next consider the subcommittee bills dealing with juvenile justice. EXHIBIT 5 is included as information given to the committee for consideration.

EXECUTIVE ACTION ON HB 450

Motion/Vote: REP. MOLNAR MOVED TO TABLE HB 450. The motion carried 17 - 1; REP. BOHARSKI voted no.

EXECUTIVE ACTION ON HB 240

Motion: REP. SOFT MOVED HB 240 DO PASS.

Motion: REP. SOFT MOVED THE AMENDMENTS. EXHIBIT 6

Discussion: REP. SOFT explained the amendments.

{Tape: 2; Side: B; Approximate Counter 11.9.}

Mr. MacMaster discussed the necessary amendment to the funding part of the bill on page 3, lines 23 - 26 to say that the funds identified in this section have to be deposited in quarterly installments in a revenue fund to the credit of the legislative council. It would further state that the deposits must be sufficient to meet the commission's costs for the next quarter and that the first installment must be deposited on or before July 1, 1995.

Vote: The motion carried unanimously by voice vote.

Motion/Vote: REP. MOLNAR MOVED HB 240 DO PASS AS AMENDED. The motion carried 18 - 0. (REPS. AHNER, SMITH, WYATT, GRIMES voted by proxy.)

EXECUTIVE ACTION ON HB 429

Motion: REP. MOLNAR MOVED HB 429 DO PASS.

Motion: REP. MOLNAR MOVED TO AMEND HB 429. EXHIBIT 7

Discussion: REP. MOLNAR said the intent of the amendments was to hold youths responsible for their actions.

REP. KOTTEL found inconsistencies between the bill and the amendments as concerned confidentiality in the hearing.

Mr. MacMaster answered the concern, "With respect to the type of records that REP. MOLNAR'S amendments seeks to add in, he is right, Judge Larson did respond to this issue during one of the subcommittee hearings and he said that people don't come into his court and make these uncorroborated allegations." The judge had said that the attorneys for the youths don't come into court and start making allegations about the parents which are not true; and if they did, they wouldn't be practicing law very long.

REP. KOTTEL said that what they were doing between the two sections was inconsistent and she pointed out the where she saw that.

REP. MOLNAR felt the concern was covered under section 2 in outlining the discretion the judge could exercise in closing a trial if certain things were going to be discussed.

REP. KOTTEL asked then why the one section of the amendments provided for the non-exclusion of the general public.

REP. MOLNAR said he had had a problem with that as well and would not object to an amendment to keep a hearing of a youth in need of supervision confidential. However, he wanted to leave the records open on the act that got the youth there.

REP. BOHARSKI asked if they struck subsection 5, lines 9 - 11 would that leave the discretion to the judge to close a hearing.

Mr. MacMaster said that generally court hearings are open to the public whether civil, criminal or youth court cases unless there is a statute which closes it. He thought if they struck all of 5, they would still be open to the public.

REP. MOLNAR said currently the delinquent youth hearing is open, while misdemeanors and youth in need of supervision hearings are not.

REP. BOHARSKI asked which of those REP. KOTTEL was concerned with.

REP. KOTTEL said she was concerned with youth-in-need-of-supervision and youth-in-need-of-care hearings. She was concerned about protecting them from public scrutiny when they might make allegations.

REP. MOLNAR said that youth in need of care was not included in this bill. Section 1 was concerned with youth in need of supervision or delinquent youth.

REP. MC GEE asked if plea bargaining takes place where delinquency is plea bargained down to youth in need of supervision.

REP. MOLNAR answered, "Exactly, and that is why we are trying to keep the records open on what got the youth there. But we are trying to protect the people that in the judge's court [he was speaking of Judge Larson's court] you may not have that problems that quite frankly are rampant in just about all the others."

REP. MC GEE and REP. KOTTEL continued to discuss the issue.

{Tape: 2; Side: B; Approx. Counter: 35.2}

REP. MOLNAR suggested the following language:

"In a hearing on a petition under this section, the general public may not be excluded except in cases of youth in need of supervision."

Motion: REP. MOLNAR MOVED A SUBSTITUTE AMENDMENT TO INCLUDE THE LANGUAGE ABOVE.

Discussion: REP. KOTTEL expressed her concerns about the bill and made disclaimers about her lack of knowledge and experience in this area of the law. She was also concerned about the lack of other district court judges' support. These were some of her reasons for not supporting the amendment or the bill.

Vote: The motion to adopt the Molnar amendments carried 13 - 6; REPS. WYATT, SHEA, HURDLE, CAREY, MC CULLOCH and KOTTEL voted no.

Motion: REP. MOLNAR MOVED HB 429 DO PASS AS AMENDED.

REP. MOLNAR said this bill was a small step toward solving a large problem. It would try to give a first-time offender a small shock by publishing the name and the offense, but did not expect it to display background private information.

REP. MC CULLOCH said she remembered that the only proponents were in the newspaper industry while the opponents were the ones who actually work with the problem.

REP. MOLNAR responded to that by describing the affect of the amendment in closing certain hearings and he clarified that for REP. BOHARSKI.

REP. KOTTEL asked why information was being excluded from the public regarding discharge of an official duty by an officer on lines 15 - 17.

REP. MOLNAR said the information is being gathered and some of it would be private. There was additional committee discussion about this language.

Vote: The DO PASS AS AMENDED motion carried 12 - 6; REPS. WYATT, CAREY, HURDLE, SHEA, KOTTEL and MC CULLOCH voted no. (REP. BERGMAN'S proxy vote was not reported at the time of the vote.)

EXECUTIVE ACTION ON HB 380

Motion: REP. MOLNAR MOVED HB 380 DO PASS.

Motion: REP. MOLNAR MOVED TO AMEND HB 380.

Discussion: REP. MOLNAR explained the amendments and his reasons for supporting them.

{Tape: 2; Side: B; Approx. Counter: 50.8; Comments: A copy of the proposed amendments was not given to the secretary.}

REP. KOTTEL said there was no requirement for the youth to register as a sex offender. Section 46-18-254 and 46-23-506 were explained and she said there was no requirement that the youth be found adjudicated having committed any sex offense. She gave suggestions to deal with this problem in the bill.

REP. MOLNAR thought line 11 took care of it.

REP. SOFT had suggested language:

"may require a youth charged and convicted for sex offenses to register as a sex offender."

REP. KOTTEL agreed that it should go in subsection (d) at line 19.

Motion: REP. SOFT MOVED THE SUBSTITUTE AMENDMENT TO INCLUDE THE LANGUAGE REFERRED TO ABOVE.

Discussion: Mr. MacMaster suggested a better way to word and position the intent on line 30 1(0) and strike (d) on line 19:

"If the court finds the youth committed an act that if committed by an adult would have a criminal sex offense, they may require them to register as a sex offender."

This was a friendly amendment to the substitute amendment.

Vote: The motion on the Soft substitute amendment carried unanimously by voice vote.

Vote: The motion on the Molnar amendment passed 15 - 1; REP. HURDLE voted no.

Discussion: There was discussion about rewording the amendment to reflect the connection with the committee bill dealing with



HOUSE STANDING COMMITTEE REPORT

February 17, 1995

Page 1 of 1

Mr. Speaker: We, the committee on Judiciary report that House Bill 429 (first reading copy -- white) do pass as amended.

Signed: Bob Clark
Bob Clark, Chair

And, that such amendments read:

1. Page 1, line 15.

Strike: "matters" in two places

Insert: "records" in two places

Strike: "All"

Insert: "Except as provided in 41-5-603, all"

2. Page 2, line 11

Following: "~~41-5-601~~"

Insert: ", except that in the court's discretion, the general public may be excluded if the petition does not allege that the youth is delinquent"

3. Page 2, line 24.

Following: "studies,"

Strike: "and"

4. Page 2, line 25.

Following: "probationers"

Insert: ", and any report, charge, or allegation that is not adjudicated pursuant to this chapter"

-END-

Committee Vote:
Yes 12, No 6.

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Amendments to House Bill No. 429
First Reading Copy

For the Committee on the Judiciary

Prepared by Sheri S. Heffelfinger and John MacMaster
February 9, 1995

1. Page 1, line 15.

Strike: "matters" in two places

Insert: "records" in two places

Strike: "All"

Insert: "Except as provided in 41-5-603, all"

2. Page 2, line 11

Following: "~~41-5-601~~"

Insert: ", except that in the court's discretion, the general public may be excluded if the petition does not allege that the youth is delinquent

3. Page 2, line 24.

Following: "studies,"

Strike: "and"

4. Page 2, line 25.

Following: "probationers"

Insert: ", and any report, charge, or allegation that is not adjudicated pursuant to this chapter"

these youth for every violation that occurs, and be back in front of the judge.

Closing by Sponsor:

REPRESENTATIVE MCKEE was appreciative of the opportunity to work out the problems of the bill beforehand to resolve the difficulties and the fiscal note. She said the cooperation of the department and the judiciary was commendable. She quoted from Judge Larson's handout in which the young lady who was arrested for bad checks said, "my friends started telling me that I couldn't get in that much trouble because I was a minor." So the attorney said, "So, as a kid, you thought you could do almost anything, right?" She replied, "yeah." The attorney asked her if now she knew better. She said, "I mean, I thought the only reason you could get into trouble, if you're a kid, is if you kill someone." HB 380 would provide a middle ground for those problems that utilize the best features from both the juvenile and adult systems. It would grant youthful significant incentives to reform while retaining much-needed flexibility in the system to effectively deal with those offenders who do not. It does put some teeth into the system, she said. She urged their consideration.

HEARING ON HB 429

Opening Statement by Sponsor:

REPRESENTATIVE BRAD MOLNAR, House District 22, Laurel, sponsored HB 429. This bill would attempt to give consequences to youth for their actions, he said, particularly social pressure. Currently, if a youth is charged, the newspaper cannot print who they are, or if they had been charged in the past. Under current law, they can report it as a felony, but they don't. If they do report the crime as a felony, and then it is plead down to a misdemeanor, the newspaper is in more trouble than the kid is because misdemeanors are held to be quiet. Youth in need of supervision is totally confidential. This bill would change some of that. In the case of youth in need of supervision, it would make public the part concerning the youth. What often happens, he said, is the lawyer would maneuver the case until it was no longer the question of, "did you steal the car," or "did you steal and sell drugs," or "did you beat your parents to a pulp," but rather the affidavit would say, "the father abused the child physically," or "the mother did it emotionally and sexually," or "the grandmother starved the kid half to death." It leaves the kid looking at the parents, saying, "drop the charges, back off on this thing, or you are in more trouble than I am." Of course, with that information in the newspapers, the parents would be devastated. He said that through an amendment on the House side, they added that any report, charge or allegation that is not adjudicated pursuant to this chapter, is also held quiet. The pro-active bill would also provide for the notification of victims in juvenile crimes. The victims would know what is going

on, and if the perpetrator is being released from Pine Hills. The judge would also be notified. He said it was a simple bill involving consequences. As they had heard in previous bills, there are NO consequences in youth courts. He said that public information would be helpful to parents in deciding their childrens' friends, dates, etc., when they read about minors in possession or careless driving. He maintained there would be social consequences and the youth would know that their communities would not approve of their behaviors. Someone would frown on them on the street, perhaps, if they knew a youth had vandalized an old lady's house. This is the absolute beginning of an attempt to reclaim our streets by using social pressure. It does not cost anything. It works.

Proponents' Testimony:

John Larson, District Judge, Fourth Judicial District, supported HB 429. This bill had its' inception with his colleague, Judge McLean, who for many years was a Chief Prosecutor in Missoula County. He wrote to the other judges early last year and recommended the bill. All the judges he knew were in concurrence. It opens up all the files on the district court side, he said. It does not open up psychological information, sociological studies or probation officers' files. It does make all juvenile proceedings public and has the added benefit of advising the community about the seriousness of this problem. The general person on the street does not realize the level to which juvenile crime has risen and may help with community support of prevention projects needed. The victims' rights is an essential part of the bill. He had seen cases plead down to a misdemeanor or a youth in need of supervision to seal the file. He said one county in his district still felt that any sex offense involving a youth, no matter how serious, was a matter to close the file, forbidding anyone from inspection. He urged support of the measure.

Dennis Paxinos, Yellowstone County Attorney, also spoke on behalf of the Montana County Attorneys Association. He encouraged support of HB 429. He stated that the whole idea of keeping confidential youth records was that youth make mistakes, so let's not brand them and taint them for the rest of their lives. But unfortunately, youth crime had changed dramatically in the last 25 years. This bill would introduce the element of shame. Hopefully, it would be shame, and not a boastful, "hey, I got my name in the paper." He warned the committee that although there was no fiscal note, they would be mandating notification costs. He said in his county, one FTE would be needed to comply with the bill. Even so, the bill was long overdue and he supported HB 429.

Hank Hudson, Director, Department of Family Services, said his department supported the bill.

Charles Walk, Executive Director, Montana Newspapers Association, said their organization represented 75 Montana newspapers, including 11 dailies and 64 weeklies. They supported HB 429. That support was in keeping with their consistent support of reasonable legislation aimed at opening more and more records of public business and interest for the Montana public. They certainly believe this bill follows that criteria while at the same time provides reasonable protection and privacy consideration. He also asked to submit a written testimony for Mike Voeller, Lee Newspapers of Montana, who was unable to be present for the hearing. (EXHIBIT 4)

Opponents' Testimony:

None.

Questions From Committee Members and Responses:

SENATOR RIC HOLDEN asked Mr. Paxinos about Page 4 concerning his office consulting with the victim. He thought the word, "shall" should be changed to, "may." Mr. Paxinos said any victim of a crime thinks the associated activities are very important. He said as a public servant, he thought he at least owed them the contact and information. He said in their office they could not keep up. He did not want to amend the language to say, "may." CHAIRMAN CRIPPEN said he had been advised by Greg Petesch that there may be a potential conflict between HB 429 and SB 64 and HB 551, which referred to DNA testing. Because HB 429 would repeal sections of 45-5-601 and 45-5-602. He asked for comment. Judge Larson said he was familiar with SB 64 and the provision. He stated that judges believe that in the MIP (minors in possession) legislation that there is no benefit in keeping the MIP matters confidential. They had diverted all the MIP cases in Missoula into courts where there is no confidentiality. He spoke with SENATOR GAGE and they agreed they don't need the section in SB 64, and that the repealer in HB 429 should govern.

EXECUTIVE ACTION ON HB 380

Motion: SENATOR HALLIGAN MOVED THAT HB 380 BE CONCURRED IN.

Discussion: SENATOR BARTLETT said there were some minor clarifying problems on Page 3, Line 27. When the youth reaches 25 years of age, they could strike the first, "age." Page 7, Line 5, because of the amendments to the bill, the line is talking about the, "court shall determine whether continuation in the youth's own home would be contrary to the welfare." She asked for clarification of stricken language, and proposed adding, "youth's own," after the 2nd, "the," on Page 7, Line 5. Judge Larson had no objection to the amendment. CHAIRMAN CRIPPEN inquired if they wanted to adopt Mr. Hudson's amendment, as well, on Page 7, Line 1, striking, "resources." He was concerned about

DATE 3-13-95

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March 13, 1995

Testimony in favor of House Bill 429

Mr. Chairman, members of the committee. For the record, my name is Mike Voeller and I represent Lee Newspapers of Montana.

We support House Bill 429 and the testimony by Charles Walk of the Montana Newspaper Association and would also like to present testimony on behalf of the bill.

In the 1960s the late District Judge Lester Loble of Helena established a national reputation for his tough stance on handling juvenile offenders and his insistence that their names be a matter of public record. Today, the names of juvenile offenders, for the most part, are shrouded in secrecy.

I retired last August after 30 years with the Helena Independent Record and 36 years in the newspaper business. Most of my experience has been as an editor and/or editorial page editor. I don't know how many times during those 36 years that I have heard people express frustration with the secrecy surrounding offenses committed by juveniles.

This is just one of many cases in point. In November or December 1980 I wrote an editorial headlined "There oughtta be a law" which invited readers to submit their ideas for proposed legislation. I was surprised at the number of people who wrote, "Publish the names of juvenile offenders." Early in the 1981 session I approached former Gov. Stan Stephens who was then serving in the Montana Senate from Havre and discussed the concerns expressed by readers who responded to my editorial. Stephens sponsored legislation that eventually became Section 2 of 41-5-601. It states that when a petition is filed under 41-5-501, publicity may not be withheld regarding any youth formally charged or proceeded against as, or found to be, a delinquent youth as a result of the commission of any offense that would be punishable as a felony if the youth were any adult.

But it seems like all too often authorities manage to circumvent this section of the law and the names of the perpetrators remain secret.

Under current law names of juvenile offenders are public record if they are cited for traffic offenses, including DUI. However, if juveniles are charged with illegal possession their names are not a matter of public record. What's the difference?

I admit that my opinion that the names of juvenile offenders should be published is based somewhat on anecdotal evidence. However, I think it has validity worthy of consideration and that the public would applaud passage of House Bill 429.

EXECUTIVE ACTION ON HB 74

Motion: SENATOR HALLIGAN stated that Gordon Morris of the Montana Association of Counties was present and anticipating the ability to discuss HB 74 which had been tabled. He said there was the possibility of an amendment.

Discussion: Mr. Morris addressed the committee. He came prepared to offer an amendment previously, and the bill had been tabled. It had been stated that, "the judges can already do that," but he defied them to show where in the civil procedures it was stated that judges in the court of record can instruct the jury that costs can be assessed against either a plaintiff or a defendant when the case is deemed frivolous. He presented a proposed amendment. (EXHIBIT 6). CHAIRMAN CRIPPEN said they would consider it the following day.

EXECUTIVE ACTION ON HB 429

Discussion: Valencia Lane stated there had been a conflict notice that three separate bills amended 41-5-604. Those bills were: HB 429, HB 551, and SB 64. There was also a conflict in HB 429 which repeals two sections which are also amended in SB 64. Judge John Larson said it was fine with the people interested in the bill that HB 429 repeal the sections in SB 64. The repeal will override the amendment which are 41-5-601 and 602. There is a problem with the three bills amending 41-5-604. To address the conflict, she drafted amendments (EXHIBIT 7) as shown in hb042901.avl. If both HB 551 on DNA testing and HB 429 pass, this is what the section would look like. The only substantive change in HB 551 was the insertion of DNA records in the list of records that are not to be filled. This was addressed in Subsection 5 of 41-5-604. The DNA amendment from HB 551 goes into 41-5-604. The rest of the changes are clean-up, editorial changes incorporated from both bills. The substantive changes from HB 429, which were the inclusion of fingerprints and photographs in Subsection 5, which are not to be filled. She started to draft changes from HB 429 to HB 551 and she hit a point where they could not be reconciled because one was putting in DNA records in the exception clause and the other bill was striking the exception clause. She did the coordination instruction which shows if both bills pass, this is how it would look. If either bill does not pass, she said, the amendments to this section of law contained in either bill that does pass, stay.

Motion/Vote: SENATOR JABS MOVED THE AMENDMENTS. The MOTION CARRIED UNANIMOUSLY on an oral vote.

Discussion: SENATOR BARTLETT referred to Page 1, Line 20, the new section said, "all filed matter related to a youth cited in a justice's court, are public record." At the beginning of that

section the words, "except as provided in Section 5," should be added. Valencia Lane explained that they would have to say, "except as provided in 41-5-604." She said it was a good idea and had nothing to do with the conflicts. On Page 1, Line 20, after, "all filed matters," insert, "except as provided in 41-5-604."

Motion/Vote: SENATOR HALLIGAN MOVED THE AMENDMENT AS STATED ABOVE. The MOTION CARRIED UNANIMOUSLY on an oral vote.

Motion/Vote: SENATOR HALLIGAN MOVED THAT HB 429 BE CONCURRED AS AMENDED. The MOTION CARRIED UNANIMOUSLY on an oral vote.

EXECUTIVE ACTION ON HB 214

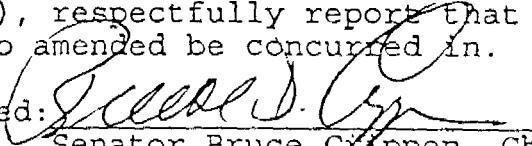
Discussion: CHAIRMAN CRIPPEN said there was a question brought up by some people that the striking of Section 45-5-505 on Page 5, Line 19, would strike that section in its entirety from the code. He did not think so, since there was nothing in the title repealing it. Valencia Lane said the question had been raised on Page 5, Line 19, if 45-5-505 was struck, if somehow it would repeal the crime of deviate sexual conduct. She said there was no way that striking that reference in that section of law repealed the crime of deviate sexual conduct. 45-5-505 is still on the books, it creates the crime of deviate sexual conduct. There is a definition in the Title of 45 that defines maybe 17 pages of amendments. Deviate sexual conduct is defined in there. On Page 5, Line 19, 45-5-505 is the crime of deviate conduct. If the reference is stricken to that section on Line 19, it would say that a person convicted of the crime of deviate sexual conduct does not have to register under Title 45, Chapter 23, Part 5, which is the registration of sexual offenders. Line 18, says, "sexual offense means these following offenses:" Line 16 says sexual or violent offender means a person convicted of a sexual or violent offense. Sexual offenses are listed. She said if sexual conduct is removed from the definition, it would say those people who might be convicted of deviate sexual conduct won't have to register as a sexual offender under these sections of law. But it would not repeal the crime of deviate sexual conduct. CHAIRMAN CRIPPEN said Arlette Randash was concerned that it was stricken from the bill. He didn't know if the concern was that it was stricken from the registration. He said he did not think anyone had ever been convicted under this section, for bestiality or the other items covered. SENATOR BAER said he had spoke with REPRESENTATIVES DENNY AND BOHARSKI who related that there was an attempt in the House on HB 157 to also strike 45-5-505, and there were hostile murmurings that if it were stricken, it would not pass. Having an inconsistency in two like bills, whereby one retains 45-5-505 and the other strikes the code section, was maybe an oversight by the sponsor or the House committee. He proposed, unless there was any significant impact of why 45-5-505 was stricken, that they amend the bill by re-inserting it.

SENATE STANDING COMMITTEE REPORT

Page 1 of 1
March 15, 1995

MR. PRESIDENT:

We, your committee on Judiciary having had under consideration HB 429 (third reading copy -- blue), respectfully report that HB 429 be amended as follows and as so amended be concurred in.

Signed: 

Senator Bruce Crappen, Chair

That such amendments read:

1. Page 1, line 20.

Following: "record."

Strike: "All"

Insert: "Except as provided in 41-5-604, all"

2. Page 6, line 25.

Insert: "NEW SECTION. Section 10. Coordination instruction. If both [this act] and House Bill No. 551 are passed and approved and if both include a section that amends 41-5-604, then 41-5-604 is intended to read:

Section 1. Section 41-5-604, MCA, is amended to read:

"41-5-604. Disposition of records. (1) All Except as provided in subsections (2) and (5), youth court records and law enforcement records except fingerprints and photographs pertaining to a youth coming under covered by this chapter shall must be physically sealed when the youth reaches the age of 18 years of age.

(2) In those cases in which jurisdiction of the court or any agency is extended beyond the youth's 18th birthday, the above records and files shall not exempt from sealing under subsection (5) must be physically sealed upon termination of the extended jurisdiction.

(3) Upon the physical sealing of the records pertaining to a youth pursuant to this section, any an agency or department that has in its possession copies of the sealed records ~~se-sealed~~ shall also seal or destroy such the copies of the records. Anyone violating the provisions of this subsection ~~shall be~~ is subject to contempt of court.

(4) ~~Nothing herein contained shall~~ This section does not prohibit the destruction of ~~such~~ records with the consent of the youth court judge or county attorney after 10 years from the date of sealing.

(5) The requirements for sealed records in this section ~~shall do not~~ do not apply to fingerprints, DNA records, photographs, or youth traffic records or to records directly related to an offense to which access must be allowed under 41-5-604 in any case in which the youth did not fulfill all requirements of the court's judgment or disposition."

Renumber: subsequent section

-END-

 Amd. Coord.

 Sec. of Senate

Sen. Halligan

Senator Carryng Bill

601149SC.SRF

Amendments to House Bill No. 429
Third Reading Copy (blue)

Requested by Senator Crippen
For the Committee on Judiciary

Prepared by Valencia Lane
March 13, 1995

1. Page 6, line 25.

Insert: "NEW SECTION. Section 10. Coordination instruction. If both [this act] and House Bill No. 551 are passed and approved and if both include a section that amends 41-5-604, then 41-5-604 is intended to read:

Section 1. Section 41-5-604, MCA, is amended to read:

"41-5-604. Disposition of records. (1) All Except as provided in subsections (2) and (5), youth court records and law enforcement records except fingerprints and photographs pertaining to a youth coming under covered by this chapter shall must be physically sealed when the youth reaches the age of 18 years of age.

(2) In those cases in which jurisdiction of the court or any agency is extended beyond the youth's 18th birthday, the above records and files shall not exempt from sealing under subsection (5) and be physically sealed upon termination of the extended jurisdiction.

(3) Upon the physical sealing of the records pertaining to a youth pursuant to this section, any an agency or department that has in its possession copies of the sealed records so sealed shall also seal or destroy such the copies of the records. Anyone violating the provisions of this subsection ~~shall be~~ is subject to contempt of court.

(4) ~~Nothing herein contained shall~~ This section does not prohibit the destruction of such records with the consent of the youth court judge or county attorney after 10 years from the date of sealing.

(5) The requirements for sealed records in this section ~~shall do not apply to fingerprints, DNA records, photographs, or youth traffic records or to records directly related to an offense to which access must be allowed under 41-5-604 in any case in which the youth did not fulfill all requirements of the court's judgment or disposition.~~ shall do not apply to fingerprints, DNA records, photographs, or youth traffic records or to records directly related to an offense to which access must be allowed under 41-5-604 in any case in which the youth did not fulfill all requirements of the court's judgment or disposition."

{Internal References to 41-5-604: None.}

Renumber: subsequent section